

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED-ED4

01 JUL 31 PM 3:54

CLERK
U.S. DISTRICT COURT

JIMMIE CASIANO, on behalf
of himself and all other
Plaintiffs similarly situated
known and unknown,

Plaintiffs,

v.

DELIVERY PROS, INC., and MICHAEL
PROUGH, individually

Defendants.

DOCKETED

AUG 01 2001

01C 5888

JUDGE PLUNKETT

MAGISTRATE JUDGE KEYS

COMPLAINT

NOW COME Plaintiff, JIMMIE CASIANO, on behalf of himself and all other Plaintiffs similarly situated, by and through their attorney, JOHN W. BILLHORN, and for their Complaint against, DELIVERY PROS, INC., and MICHAEL PROUGH, individually, states as follows:

I. NATURE OF ACTION

1. This action is brought under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and the Portal-to-Portal Act, 29 U.S.C. §251 *et. seq.*

II. JURISDICTION AND VENUE

2. Jurisdiction arises under the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et. seq.*, the Portal-to-Portal Act, 29 U.S.C. §251 *et seq.*, and 28 U.S.C. §1331. Venue lies in the Northern District of Illinois in that Plaintiff is a resident of this district and the Defendant corporation is engaged in business in this district.

1-1

III. PARTIES

3. Defendant, DELIVERY PROS, INC., (hereinafter "Defendant") is engaged in the business of providing various delivery services to the public in and around the greater Chicagoland areas. Defendant MICHAEL PROUGH is the owner of DELIVERY PRO, INC.

4. Plaintiff, JIMMIE CASIANO (hereinafter "the named Plaintiff") and all other unnamed Plaintiffs of the class, known and unknown (hereinafter referred to as "members of the Plaintiff Class") are either present or past hourly employees of Defendants. The named Plaintiff was first employed as a delivery truck driver and helper (from approximately June of 1998 through August of 2000) and then as a in-home damages repair laborer (from approximately August 2000 through the present)

IV. CLASS ALLEGATIONS

5. Pursuant to 29 U.S.C. §216(b), this action may be maintained by the Plaintiff Class, or by anyone for and on behalf of him/herself and other Plaintiffs similarly situated, who have been damaged by Defendants' failure to comply with 29 U.S.C. §201 *et. seq.* and §251 *et. seq.* These class allegations do not pertain to the allegations contained in Count IV.

6. All past and present employees of Defendants are similarly situated to the named Plaintiff in that Defendants have applied the wage policies complained of herein, all of which violate the FLSA, on a Company-wide basis. All past and present employees, like the named Plaintiff herein, were and are engaged in job duties and responsibilities integral and indispensable to the operation of Defendants' business, and all have been and/or are presently denied proper compensation, as more specifically alleged herein, as required by the F.L.S.A.

7. For all members of the Plaintiff Class to become fully aware of their right to join this cause of action, a certain period of time as determined by this Court is necessary to send notice to the entire Plaintiff Class, as well as certain additional time for those members to file consent forms with this Court as provided by 29 U.S.C. §216(b).

8. Pursuant to Title 29 USC § 216(b), the Court shall, in addition to any judgment awarded the Plaintiff Class, allow reasonable attorneys' fees and costs of the action to be paid by Defendants.

9. In order to bring this cause of action, it has been necessary for the named Plaintiff, and will become necessary for the other members of the Plaintiff Class, to employ attorneys to secure any judgment due them with regard to back overtime compensation.

V. FACTUAL ALLEGATIONS

10. The named Plaintiff, and all other members of the Plaintiff Class, known and unknown, at all times pertinent to the cause of action, were or are employed by Defendant, said employment being integral and indispensable to Defendants' business.

11. Defendants have, both in the past and presently, employed members of the Plaintiff Class, including the named Plaintiffs, in excess of forty (40) hours in a workweek, but have failed to pay those individuals at a rate of time and one-half their regular hourly rate, pursuant to the requirements of the F.L.S.A. Instead, Defendants have compensated drivers and other employees on a weekly, salary basis, although none of the employees are subject to the salary exemptions provided by the FLSA.

COUNT I

VIOLATION OF FAIR LABOR STANDARDS ACT

1-11. Paragraphs 1 through 11 are realleged and incorporated as though set forth fully herein as paragraphs 1 through 11 of Count I.

12. Pursuant to Fair Labor Standards Act, 29 U.S.C. §201 *et. seq.*, and the Portal-to-Portal Act 29 U.S.C. §251 *et. seq.*, the named Plaintiff, and all other Plaintiffs similarly situated, known and unknown, are entitled to compensation at a rate not less than one and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in any week during the two (2) years preceding the filing of this action.

13. Defendants have at all times relevant hereto failed and refused to pay compensation to its employees, including the named Plaintiff herein, at the rate of one and one-half their regular hourly wage rate for hours worked over forty (40) in a work week, all as required by the F.L.S.A.

14. Defendants' failure to pay compensation at the rate of one and one-half for all hours worked over forty (40) in a work week, is a violation of the Fair Labor Standards Act.

WHEREFORE, Plaintiff, on behalf of himself and all other Plaintiffs similarly situated, known and unknown, respectfully requests this Court to enter an order as follows:

- A. Awarding back pay equal to the amount of all unpaid overtime compensation for the two (2) years preceding the filing of this Complaint, according to the applicable statute of limitations;
- B. Awarding prejudgment interest with respect to the total amount of unpaid overtime compensation;
- C. Awarding Plaintiff's reasonable attorneys' fees and costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and

- D. For such additional relief as the Court deems appropriate under the circumstances.

COUNT II

WILLFUL VIOLATION OF THE FAIR LABOR STANDARDS ACT

1-11. Paragraphs 1 through 11 of Count I are realleged and incorporated as though set forth fully herein as Paragraphs 1 through 11 of Count II.

12. Defendants have, both in the past and presently, willfully failed to pay the named Plaintiff and members of the Plaintiff Class for work weeks in excess of forty (40) hours per week at a rate equal to one-half times their regular rate of pay, despite the fact that Defendant knew, or should have known, of the requirements of the Fair Labor Standards Act.

13. Defendant continues a pattern of deliberate, voluntary, intentional, and willful violation of the Fair Labor Standards Act.

14. Pursuant to the Fair Labor Standards Act, Plaintiff, and all other employees similarly situated, past or present, are entitled to compensation at a rate not less than one and one-half times their regular rate of pay for all the hours worked in excess of forty (40) in any given week in three (3) years preceding the filing of this complaint.

WHEREFORE, Plaintiff, on behalf of himself and all other Plaintiffs similarly situated, known and unknown, respectfully requests this Court to enter an order as follows:

- A. Awarding back pay equal to the amount of all unpaid overtime compensation for one (1) additional year, totaling three (3) years preceding the filing of this Complaint;
- B. Awarding prejudgment interest with respect to the amount of unpaid overtime compensation;

- C. Awarding Plaintiff's reasonable attorneys' fees and Court costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and
- D. For such additional relief as the Court deems appropriate under the circumstances.

COUNT III

LIQUIDATED DAMAGES

1-11. Paragraphs 1 through 11 of Count I are realleged and incorporated as though set forth fully herein as Paragraphs 1 through 11 of Count II.

12. In denying Plaintiff and members of the Plaintiff Class compensation at a rate of one and one-half for hours worked over forty (40) in a workweek, Defendants' acts were not based upon good faith or reasonable grounds.

13. The named Plaintiff and all other past and present employees similarly situated, known and unknown, are entitled to liquidated damages equal to the amount of unpaid overtime compensation, pursuant to 29 U.S.C. §260.

WHEREFORE, Plaintiff, on behalf of himself and all other Plaintiffs similarly situated, known and unknown, respectfully request this Court to enter an order as follows:

- A. Awarding liquidated damages equal to the amount of all unpaid overtime compensation;
- B. Awarding Plaintiff's reasonable attorneys' fees and costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and
- C. For such additional relief as the Court deems appropriate under the circumstances.

COUNT IV

Individual Claim of Plaintiff JIMMIE CASIANO

1. Paragraphs 1-3 of Count I are realleged and incorporated as paragraphs 1-3 of this Count IV.

2. When Plaintiff, JIMMIE CASIANO, first changed job duties from a driver/helper to an in-home damages repair laborer, he was being improperly compensated as a salaried employee, which is the subject of Counts I and II. At some time during his employment as the in-home repair laborer, Defendants changed Plaintiff's method of compensation to a flat rate of \$60.00 per in-home repair. At the same time, certain procedures and policies also changed wherein Plaintiff was required to purchase with his own money or credit the repair materials for each job. Plaintiff and Defendants agreed that the material costs incurred for each repair job would be reimbursed to him upon Plaintiff's presentation of the reasonable receipts or other proof of purchase.

3. Plaintiff complied with the agreement and, for the most part, timely submitted various receipts and proof of purchase of the material utilized in the course of his employment for repairs.

4. However, Defendant has failed and/or refused to properly reimburse Plaintiff for the cost of the materials and has unreasonably and vexatiously withheld from Plaintiff reimbursement and/or payment for said material, in violation of the provisions of the FLSA.

WHEREFORE, Plaintiff request this Court to enter an order awarding Plaintiff payment of the back employment related expenses and for such other relief as the Court deems necessary under the circumstances.

Respectfully submitted,



John W. Billhorn, attorney for
Plaintiffs, and all other Plaintiffs similarly
situated, known or unknown.

John W. Billhorn
JOHN W. BILLHORN, P.C.
100 N. La Salle Street, Suite 1910
Chicago, Illinois 60602
(312) 201-0911

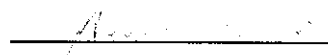
ATTORNEY CLIENT AGREEMENT

This agreement, entered into on this ____ day of _____, 2001,
between _____ (Client) and John W. Billhorn, (Attorney),
hereby authorizes and engages the Law Offices of John W. Billhorn to
pursue back wages and other relief against _____, and by
his/her signature below, hereby consents to be a party Plaintiff in said law
suit.

This agreement acknowledges that Client shall owe Attorney nothing
for the attorney's services or expenses but rather, the employer against
whom the case is brought shall be responsible for all attorney's fees and
expenses.



CLIENT



ATTORNEY

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Jimmie Casiano, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Delivery Pros, Inc. and
Michael Prough

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Cook
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John W. Billhorn
John W. Billhorn, P.C.
100 N. La Salle - Suite 1910
Chicago, IL. 60602

ATTORNEYS (IF KNOWN)

Unknown

JUDGE PLUNKETT

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|--|---|--|
| Citizen of This State | PTF DEF
<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF DEF
<input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

MAGISTRATE JUDGE KEYS

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

Cause is brought pursuant to the Fair Labor Standards Act, 29 USC Section 210 et. seq. Failure to pay overtime.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment
☐ 7

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

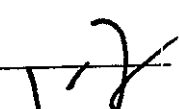
TO BE DETERMINED

VIII. REMARKS

In response to ☒ is not a refiling of a previously dismissed actionGeneral Rule 2.21D(2) this case ☐ is a refiling of case number _____ of Judge _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED
AUG 01 2001

In the Matter of

JIMMIE CASIANO, et al /Plaintiffs

vs.

Case Number

01C 5888**DELIVERY PROS, INC., et al /Defendants**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

JUDGE PLUNKETT**PLAINTIFF(S)****MAGISTRATE JUDGE KEYS**

S.D. DISTRICT COURT
 JUL 31 PM 3:34
 FILED-ED4

(A)	(B)
SIGNATURE <i>John W. Billhorn</i>	SIGNATURE DOCKETED
NAME John W. Billhorn	NAME AUG 01 2001
FIRM John W. Billhorn, P.C.	FIRM
STREET ADDRESS 100 N. La Salle, Suite 1910	STREET ADDRESS
CITY/STATE/ZIP Chicago, IL. 60602	CITY/STATE/ZIP
TELEPHONE NUMBER (312) 201-0911	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>
(C)	(D)
SIGNATURE	SIGNATURE
NAME	NAME
FIRM	FIRM
STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>
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